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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 18 2011

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a life and environmental scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we uphold the director's ultimate determination that the petitioner has not established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While the petitioner was still pursuing his Ph.D. as of the date of filing, the petitioner holds a Master's degree in Electrical Engineering from [redacted]. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, engineering of biomedical devices, and that the proposed benefits of his work, improved medical scanning devices, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver.

NYSDOT, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence of his student membership in the [redacted] As noted by the director, professional memberships are one type of evidence that can be submitted to establish exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(E). As stated by the director, because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on the professional memberships, while relevant, are not dispositive to the matter at hand. *Id.* at 222. The petitioner submitted no evidence that membership in IEEE, especially a student membership, is indicative of an influence in the field.

In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted] advising that the publisher had selected the petitioner's biography for inclusion. The letter offers to sell the petitioner an edition of the publication "at a special pre-publication savings." The letter does not indicate the number of biographies the volume will contain. The petitioner also submitted promotional materials from *Wikipedia* about [redacted] publications The materials state that the publications profile those who are influencing their nation's development but also indicate that that the publisher "offers some features associated with the vanity press business models, such as selling merchandise to persons selected as biographees, although this is not a criterion and there is never a charge for being listed or aggressive sales tactics used." The materials do not state how many biographies are included in each edition.

With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[1] *See Lamilem Badasa v. Michael Mukasey*, 540

[1] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or

F.3d 909 (8th Cir. 2008). That said, we cannot ignore that the information from this website submitted by the petitioner for our consideration is consistent with a publisher that publishes volumes containing thousands, if not hundreds of thousands of brief biographies and offers to sell memorabilia to those whose biographies are included. Inclusion in one of these large collections of biographies is not significant.

Initially, the petitioner submitted a single email request from [redacted] inviting the petitioner to review a manuscript submitted for publication. The email further requests that if the petitioner is unable to complete the review that he suggest an alternate reviewer. The petitioner did not submit any evidence that he actually completed the review. Regardless, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and cannot, by itself, demonstrate the petitioner's influence in the field.

In response to the director's request for additional evidence, the petitioner submitted evidence of requests to review manuscripts postdating the filing of the petition. As noted by the director, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, the director declined to consider this evidence.

On appeal, the petitioner asserts that while the requests postdate the filing of the petition, they resulted from his influence in the field prior to that date. As stated above, the petitioner must demonstrate his eligibility as of the filing date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, that means that he must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that he will subsequently accrue evidence demonstrating his influence in the field. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

> reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on March 17, 2011, a copy of which is incorporated into the record of proceeding.

The petitioner submitted evidence that he authored three articles, including one in the conference proceedings of the Society of Photo-Optical Instrumentation Engineers (SPIE). The petitioner also submitted evidence that he presented his work at three conferences. Finally, the petitioner submitted poster presentations that appear to have been presented locally at the Center for Subsurface Sensing and Imaging Systems (CenSSIS) at Northeastern University where the petitioner was a student.

Publication and presentation, while demonstrating that the petitioner has disseminated his work, do not demonstrate the influence of that work. As evidence of the influence of the petitioner's publications and presentations, he initially submitted evidence that a book chapter, an unpublished manuscript, two articles and a technical memorandum cite the petitioner's publications. In response to the director's request for additional evidence, the petitioner submitted three additional articles that cite the petitioner's work, at least two of which postdate the filing of the petition. The petitioner also submitted an Internet citation index reflecting that two of the petitioner's articles have garnered four citations each.

The director concluded that the petitioner's citation record was not indicative of an influence in the field. On appeal, the petitioner asserts that his citation record is impressive given the publication date of his articles and the impact factors of the journals in which his articles appeared. The petitioner asserts that the impact factor is based on the average number of citations per year and asserts that his articles have garnered above the average number of citations per year. We are not persuaded that any article with citations that exceed the journal's impact factor has influenced the field as a whole. Ultimately, while we concur with the petitioner that the small number of citations in this matter does not preclude eligibility, four citations per article do not, by themselves, establish the petitioner's influence in the field as a whole.

The remaining evidence consists of letters and press coverage of a recent innovation from [redacted] where the petitioner was working as of the date of filing. We will address the letters below. We will also address the press coverage below in the context of the letters from the founder of [redacted] and a former employee of that company. On appeal, the petitioner asserts that of the eight letters, five are from independent or "external researchers." We are not persuaded that individuals who work or recently worked or studied at the same institution where the petitioner was a student are "independent" or "external." Thus, we concur with the director's conclusion that only two of the letters are from independent sources. We will address all of the letters below.

[redacted], an associate professor at [redacted] explains that he served as the petitioner's academic advisor. [redacted] confirms that the petitioner's Master of Science work related to "a project involving the [sic] laser-generated acoustic signals to detect objects buried in soil." While [redacted] characterizes this work as "very successful" and notes that the petitioner presented this work at conferences, [redacted] provides no examples of how this work is being used in the field.

[redacted] next discusses the petitioner's work developing new algorithms for hyperspectral imaging in combination with confocal microscopy. [redacted] asserts that the petitioner's work in this area "has led to new imaging techniques for imaging blood and blood oxygen in the skin." [redacted] notes that the petitioner published this work. [redacted] further explains that the petitioner combined this work with confocal microscopy to image possible skin cancers. [redacted] does not, however, provide any examples of how this work is being used in the field. [redacted] concludes only that the petitioner's current work has the "potential for widespread manufacture and use."

Finally, [redacted] states:

> The expertise that [the petitioner] has gained here in working on his MS and Ph.D. research is unique. To replicate the expertise he has gained in this field through years of study would be difficult, costly, and time-consuming. The projects on which he has been involved give him insights into a variety of mechanisms for subsurfacing imaging, whether under the ground, inside the body, or inside the cell.

It cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the alien employment certification process. *NYSDOT*, 22 I&N Dec. at 221. Ultimately, simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.*

[redacted] a professor at [redacted] and Education Thrust Leader with [redacted] asserts that the petitioner's work has practical applications for land mine detection. [redacted] notes the importance of landmine detection, which is not at issue, and asserts that the petitioner's use of laser-induced acoustic imaging is "novel." [redacted] does not explain, however, how the petitioner's work in this area has already impacted the field. As stated above, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218.

[redacted] a research investigator at the [redacted], acknowledges that he received his Ph.D. from [redacted] and that he has known the petitioner "for more than six years." [redacted] discusses the importance of early skin cancer detection and asserts that the petitioner "is the first scientist who has successfully developed a visible wide field multispectral system for comprehensive imaging of skin chromophores and blood vessels as well as inhomogeneous statistical model of diffuse light migration." While [redacted] speculates that this work "will" help address specific issues relating to skin cancer, he does not provide examples of how the petitioner's work is already impacting the petitioner's field of engineering imaging devices. Rather, [redacted] discusses the significance of the journal that carried the petitioner's work. As discussed above,

however, the fact that the petitioner disseminated his work does not demonstrate its ultimate influence in the field.

[redacted], a professor at [redacted] and Director of [redacted], asserts that he has "never worked with" the petitioner. Given the petitioner's employment as a research assistant at [redacted] we cannot consider [redacted] an independent reference. In fact, [redacted] implication that he is an independent reference somewhat reduces his overall credibility. [redacted] asserts tha[redacted]' invitation to the petitioner to present his work at a poster exhibition program demonstrates that he is "one of the most brilliant and promising young scientists in the nation." [redacted] does not sufficiently explain how an invitation to present the petitioner's work at the center where he works demonstrates the significance of the petitioner's work in the field generally. More specifically, [redacted] states that the petitioner's imaging technology for skin cancer "could greatly helps [sic] to expand our understanding of the skin cancer and its growth mechanism" and has "tremendous potential." At issue, however, is whether the petitioner's research has already influenced the field. [redacted] does not suggest that it has.

[redacted], Director of the Optical Imaging Laboratory at [redacted] asserts that while he has never worked with the petitioner he has "benefited very much from his work." We cannot ignore that [redacted] obtained his Ph.D. from [redacted] in 2002 and, thus, his studies there overlapped with the petitioner. Moreover, his letter does not demonstrate the petitioner's influence beyond the [redacted] area. [redacted] discusses the petitioner's microscopy research and the potential significance of the developing technology. [redacted] states that he and the petitioner "had detailed discussions and exchanged ideas in optical imaging techniques and optical microscopy." [redacted] continues that the petitioner's "expertise and insights in optical imaging system helped us in a lot of aspects of development and trouble-shooting for new imaging methods at the hospital." [redacted] does not explicitly identify an imaging device that Harvard Medical School adopted or perfected based on consultations with the petitioner.

[redacted] asserts that the petitioner joined [redacted] in 2007 and "has made significant contributions to the milestone of acquiring FDA clearance and launching the company's first product, a fiber-optic, catheter-based, near infrared (NIR) spectroscopy system designed to characterize the composition of coronary plaques in patients undergoing catheterization." [redacted] explains that the petitioner focused on overcoming the challenges of performing spectroscopy in the human heart and that the petitioner's "invaluable work contributed [to] developing the innovative product." More specifically, according to [redacted], the petitioner's "extensive study in the characterization and compensation of the blood degradation effect established a link between received near infrared signals and tissue components despite blood."

[redacted], formerly a senior scientist at [redacted], explains that [redacted] recruited the petitioner to address an obstacle involving the reduction of detection ability due to "highly absorbing and scattering blood." [redacted] concludes that the petitioner made a key contribution to the ability to detect vulnerable lipid-rich plaques, bringing the device "into a practical stage."

In response to the director's request for additional evidence, [redacted] Development a[redacted]k, asserts that the petitioner helped develop a test of the catheter and helped finalize the company's algorithm to estimate the amount of blood between the catheter and artery wall.

The petitioner submitted news coverage confirming that the U.S. Food and Drug Administration (FDA) approved [redacted] LipiScan NIR Catheter Imaging System for sale and marketing in 2008. In response to the director's request for additional evidence, the petitioner submitted a May 19, 2009 press release from [redacted] reprinted by Reuters confirming the first use of the LipiScan imaging system in a patient. The record also contains abstracts of presentations relating to the testing of the imaging system listing the petitioner as a coauthor. As the petitioner submitted these abstracts in response to the director's request for additional evidence and the record contains no evidence of the exact presentation date, the petitioner has not established that these presentations predate the filing of the petition. The only presentation relating to coronary imaging submitted initially, presented in 2007 according to the petitioner's curriculum vitae, reports the results of an algorithm for an existing catheter based system.

The above evidence establishes that the petitioner's employer values his work testing a product that has gained FDA approval and is being tested in patients. The petitioner, however, has not submitted corroborating evidence of the significance of his role on what is likely a patented or patent-pending technology. Specifically, the petitioner did not submit a patent application listing the petitioner as an inventor.

The petitioner's ability to perform the duties for which he was hired does not, by itself, warrant a waiver of the alien employment certification process. [redacted] asserts that the national interest waiver is necessary because it would take three years to obtain the same visa classification for the petitioner without the waiver. The processing time at USCIS is unaffected by whether an employer files a petition supported by an approved alien employment certification or a self-petitioner seeks a waiver of that requirement. [redacted] provides no support for the implication that the current Department of Labor processing times would add an unreasonable amount of time to the overall processing. Regardless, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

Finally, the record does contain two letters from independent references that the petitioner submitted in response to the director's request for additional evidence. [redacted], an assistant professor at [redacted]y, asserts that the petitioner's research has practical applications and "will correct the issue of over-estimation of the diameter and spatial distribution of blood vessels." The petitioner submitted evidence that, after the date of filing, [redacted] cited the petitioner's research, apparently utilizing one of the petitioner's equations. A single example of an independent author's use of one of the petitioner's equations after the date of filing cannot demonstrate the petitioner's influence on the field as a whole as of that date.

[redacted], an associate professor at the [redacted], explains that Dr. [redacted] introduced the petitioner to [redacted] and that they have had several discussions about skin imaging. [redacted] asserts that the petitioner's research constitutes a "great advance in understanding the relationship between skin pathology and vascular network." USCIS need not accept primarily conclusory assertions.[2] [redacted] does not explain how the petitioner's work has already influenced the field of imaging engineering.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of contributions without providing specific examples of how those innovations have influenced the field of medical imaging engineering. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[3] The petitioner failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

According to the Department of Labor's Occupational Outlook Handbook (OOH), electrical engineers "design, develop, test, and supervise the manufacture of electrical equipment." *See* http://www.bls.gov/oco/ocos027.htm (accessed March 9, 2011 and incorporated into the record of

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[2] *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

proceeding). Thus, designing and testing original devices is an inherent part of the petitioner's occupation. As such, these duties, even if successfully performed, do not, by themselves, warrant a waiver of the alien employment certification process.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is working towards a Ph.D. or who is working for a private medical technology company that produces marketable products inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.